S. HRG. 98-1079

AMENDMENTS TO THE PACKERS AND STOCKYARDS ACT, 1921

HEARING

BEFORE THE

SUBCOMMITTEE ON
AGRICULTURAL PRODUCTION, MARKETING,
AND STABILIZATION OF PRICES

OF THE

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 2781

A BILL TO AMEND THE PACKERS AND STOCKYARDS ACT, 1921, TO REMOVE PROCESSED POULTRY MARKETINGS FROM THE COVERAGE OF SUCH ACT

SEPTEMBER 20, 1984

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CONTENTS

Page

Cochran, Hon. Thad, a U.S. Senator from Mississippi, opening statement 1

CHRONOLOGICAL LIST OF WITNESSES

Jones, Bill, Administrator, Packers and Stockyards Administration, Marketing and Inspection Services, U.S. Department of Agriculture 2
Sanderson, Joe Frank, Sanderson Farms, Inc., Laurel, MS 8
Hatfield, Joe, president, Fieldale Corp., Baldwin, GA 10
Sylvest, Harold, president, Poultry Products, Inc., Montgomery, AL 12
Miller, James, assistant legislative director, National Grange, accompanied by Richard Burchfield and Earl Parsons 16
Shaffer, Ronald E., Pennsylvania State Grange, Harrisburg, PA 18
Proctor, Stuart, Jr., assistant director, national affairs, American Farm Bureau Federation 20
Weaver, Robert, representing Pennsylvania Farmers' Association, Snyder County, PA 22
Burchfield, Richard, Port Royal, PA 23
Parsons, Earl, Shade Gap, PA 25

APPENDIX

Huddleston, Hon. Walter D., a U.S. Senator from Kentucky, statement 29
Jones, B.H. (Bill), Administrator, Packers and Stockyards Administration, U.S. Department of Agriculture, statement 29
Miller, James C., assistant legislative director, National Grange 30
Proctor, Stuart E., Jr., assistant director, national affairs division, American Farm Bureau Federation, statement 32
S. 2781, reprint 35
Lyng, Richard E., Acting Secretary, U.S. Department of Agriculture, report on S. 2781 from the Department in a letter dated September 24, 1984, to Senator Helms 37

AMENDMENTS TO THE PACKERS AND STOCKYARDS ACT, 1921

THURSDAY, SEPTEMBER 20, 1984

U.S. SENATE,
SUBCOMMITTEE ON AGRICULTURAL PRODUCTION,
MARKETING, AND STABILIZATION OF PRICES OF THE
COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:12 a.m., in room 328–A, Russell Senate Office Building, Hon. Thad Cochran (chairman of the subcommittee) presiding.

Present: Senators Cochran, Huddleston, and Zorinsky.

STATEMENT OF HON. THAD COCHRAN, A U.S. SENATOR FROM MISSISSIPPI

Senator COCHRAN. The subcommittee will come to order.

We welcome each of you to the hearing. This is a hearing on S. 2781,[1] a bill to amend the Packers and Stockyards Act of 1921, to remove processed poultry marketings from the coverage of the act.

This bill was introduced in June by Senator Howell Heflin of Alabama. It would leave intact, we are told, the Packers and Stockyard Administration jurisdiction over transactions in live poultry marketing.

According to those in favor of the bill, the purpose of S. 2781 is to clarify ambiguous language in the Packers and Stockyards Act, which has led to a court ruling that USDA has jurisdiction over the processed poultry products industry.

It is the position of some in the industry that Congress never intended for processed poultry to be under the jurisdiction of the Packers and Stockyards Act.

We have with us this morning administration representatives and several industry and farm organization witnesses, who will testify on this subject. I really appreciate all of you being here as witnesses, and we thank you for your participation and your assistance in our review of this proposed legislation.

Senator Zorinsky, do you have any opening statements or comments that you would like to make before we begin hearing from the witnesses?

Senator ZORINSKY. No; I do not.

[1] See p. 35 for a reprint of S. 2781 with accompanying report from the Department of Agriculture.

Senator COCHRAN. Our first witness is a representative of the Department of Agriculture, Bill Jones, who is Administrator of the Packers and Stockyards Administration, Marketing and Inspection Services.

Mr. Jones, we welcome you. We thank you for being here. If you would come and have a seat right here, we would appreciate having your comments about the legislation.

We have a copy of your written statement, which we will incorporate in full in the record and we would encourage you to make summary comments from your written statement.[1]

STATEMENT OF BILL JONES, ADMINISTRATOR, PACKERS AND STOCKYARDS ADMINISTRATION, MARKETING AND INSPECTION SERVICES, U.S. DEPARTMENT OF AGRICULTURE

Mr. JONES. I will handle in whatever way that you would prefer, Mr. Chairman.

Senator COCHRAN. Tell us what you think about the bill.

Mr. JONES. Well, we have done that sort of in one statement. First, may I introduce to you two men who are with me, Ken Stricklin is in charge of our Packer and Poultry Division, and Richard Bauermeister is in charge of the Poultry Branch.

I do appreciate the opportunity to appear before the subcommittee and comment on S. 2781. As you have indicated, the bill would amend P&S to remove jurisdiction over the product marketing of poultry, and I understand other issues will be addressed involving P&SA's role in poultry marketings.

First, just let me say that the importance of the industry to farmers, consumers, and the economy is well documented. The industry does produce efficiently, high quality protein for the consuming public at reasonable prices, and we estimate, anyway, that that is valued at the wholesale level of about $8 million. So it is a very important industry.

As far as the Department's position is concerned, we say in our opening statement that we do not take a position on the particular bill, but we do have some concerns. One of those concerns is that the Department's jurisdiction over packers who handle poultry products would continue. So this, in effect, would set up one set of rules and regulations for red meat packers who handle poultry products and another set of rules for those who are what we might term "pure" poultry firms. That would be one of the concerns.

I think you are familiar with the history of the act. I would just like to make one comment in that regard, however. At the time the act was passed, of course, the red meat packers were the ones who were handling dressed poultry, what little volume moved in interstate commerce, and thus, the marketing of dressed poultry was actually brought under the act at the time that the act was passed.

Also, I think that perhaps you are familiar with what developed in the live poultry markets. There were rather large live poultry markets at major consumer centers, and a number of unethical practices did develop at those markets, and so title V was added to the act in 1935.

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[1] See p. 29 for the prepared statement of Mr. Jones.

You are familiar, also, that during the period of the mid-1940's we had moved from what was primarily farmyard production on more or less a seasonal basis to now the industry that we have, where particularly in broilers, large integrated firms produce millions of birds, and it is no longer a farmyard kind of business.

Also, by and large the product now moves to the consuming centers in the form of dressed rather than live.

There are a couple of enforcement problems that I would like to bring to the attention of the subcommittee. The Agency has yet, to date, to lose a case involving poultry violation of the act because of jurisdiction, and that question you raised in your opening statement.

In fact, there is a court of appeals decision on the books that does uphold the Department's authority with respect to the modern integrated poultry operation. However, the jurisdiction obviously is not as clearcut as it is for livestock and meats, and this does give us some problems.

It does make it more difficult for us to investigate and prosecute cases involving poultry and poultry products, and I would say both with respect to product marketing and the handling of live birds under grow-out or marketing agreements.

It is common for the firms in the industry to force us to go through subpoena enforcement actions in the civil courts, and also the courts have held that the Agency cannot utilize the administrative procedure in connection with poultry violations, but rather must pursue such violations of the act through the U.S. district court.

This, of course, entails referring such cases to the Attorney General for prosecution. In contrast, the Agency utilizes the administrative procedure primarily, actually, in livestock and meat as the procedures are outlined in the act.

So we would say as a result of these expenditures of resources required in terms of both money and manpower, it is substantially greater than in the case of investigating similar complaints involving livestock and red meat.

As Administrator of the Agency, I would much prefer to see the Congress do one of two things: Either relieve the Agency of any responsibility with respect to firms which handle poultry only, or give the Agency clearly the same authority that we have for red meat and for livestock, one way or the other.

It is a rather frustrating experience to try to implement the act under the existing language.

One other point that I would like to make is that we generally talk in terms as if we had "pure" entities operating within the poultry and red meat industry. The trend is, and we think it is likely to continue to be, toward combination operations rather than pure operations, and that is poultry and red meat being handled by the same firm, and this would be particularly in the processing and distribution segments.

A review of the 50 largest poultry firms shows that 23, or nearly 50 percent of them, also handle red meats. Also, in the 50 largest red meat slaughterer/processers, those that are engaged in both slaughtering and processing, 41 of those 50 have grants of poultry inspection under FSIS.

There is a similar sort of mixed bag situation and trend, as we see it, in the products themselves with more and more of the processed and sausage-type products containing both poultry and red meat. For example, the beef franks under an FSIS regulation can contain up to 15 percent poultry meat. We are told that each week the Agency gets more and more requests for grants of poultry inspection from red meat processors.

So this trend we would expect to have continued in the product side, as we see it also with respect to the firms.

I guess the last point then that I would like to make is, if there is any attempt to apply different enforcement standards to poultry transactions as contrasted to livestock and red meat transactions of the same firm, this will create serious problems for the industry and for the Agency.

With that, Mr. Chairman, I will be glad to answer any questions that you or Senator Zorinsky may have.

Senator COCHRAN. Thank you very much, Mr. Jones, for your review of the situation and your description of the bill and what effect it would have on the operation of the Agency and the industry.

To be sure I understand exactly what is at issue here, could you tell me what types of investigations of the poultry industry are performed by your Agency and the purpose of those investigations?

Mr. JONES. Rather briefly, on the growing side, we do review the grow-out contracts and marketing agreements, and of course, we do have both types of arrangements.

We review those for the items covered and also for the conditions of purchase or conditions of grow-out, and of course the compliance with those contracts, payment determination and the time of payment, the handling of such things as dead on arrivals, condemnation losses and that kind of thing.

The problems I would say we have run into there, primarily, have involved unilateral changes, even sometimes when a given flock is under a contract by the processor. In some cases we do find discrimination among the growers, and in some cases we do find growers being rated for payment purposes on other than comparable criteria.

Then another area would be the weighing of birds, the time, the order of weighing; and the problem we have run into here, of course, is delay in weighing.

We also do review grower cutoff complaints, which we do see from time to time, when they are cut off by an integrator and a complaint is filed with us. We then do make a determination for justification and whether or not it is justified from an economic standpoint, whether or not there has been any discrimination in that cutoff.

The problems that we run into sometimes are that we do, again, find growers being rated on performance, when actually the criteria are not entirely comparable.

We have actually found that growers are somewhat reluctant to complain to us. In fact, they are reluctant to talk to us very much, it seems, because they are very much afraid of being cut off.

On the marketing side, our investigations would involve unfair or unjustly discriminatory or deceptive or noncompetitive kinds of

practices. This would be such things as commercial bribery or illegal inducements, such as lavish entertainment or payment of slotting fees, or payment without any services being rendered.

Also, we get into sometimes the allotment of territories primarily on the part of brokers and distributors, and then there has been one case on the boycotting issue as far as distributors were concerned.

So those are pretty much the areas that we have covered in the time and immediately before I came to the Agency.

Senator COCHRAN. Most of the review then is for the purpose of protecting growers when you are looking at contracts. You are protecting growers against being overreached or treated unfairly by packers and those who are processing the birds?

Mr. JONES. That would be where most of our resources would be spent, yes, with some resources then on the marketing side.

Senator COCHRAN. Would the bill before us, in your opinion, change the authority of your Agency to make those reviews of contracts and agreements?

Mr. JONES. Well, as I have looked at the Heflin bill, I would say that there would be three areas where it would impact. One would be in the case that it could present a records problem to us. We have found it necessary sometimes to go into the marketing records in order to determine whether or not the firm is involved in interstate commerce and, thus, whether or not they are subject to the act.

If we are shut off, let's say, from the marketing records, that at times could give us some problems.

I suppose there is always the theoretical economic argument, and that is to the extent that things go on in the marketing area that are somewhat of an underground economy character, where money is siphoned off and no value or services are performed, that the traditional theoretical economic argument would be that the cost of this would come out of the pockets eventually of the consumers or the producers, or both.

That, and then the other thing that we mentioned about subjecting one set of competitive firms to one set of rules and the other group to another set, I think those are the only negatives that we would see in the bill.

Senator COCHRAN. Could the approval of this bill result in the Packers and Stockyards Administration regulating the industry with respect to live birds, and then the Federal Trade Commission or other agencies regulating the industry with respect to the processed products?

Mr. JONES. Yes, except for those that handle both products, those that handle red meat and poultry. I think the act would clearly say that all poultry transactions, and the cases that we have had would back this up, that the poultry transactions of those firms would still be subject to P&S jurisdiction. So it would be the so-called "pure" poultry firms that would be taken out from under the act.

Senator COCHRAN. So if the bill would be enacted, it is your view that processed poultry in some firms and red meat would continue to be regulated by the Packers and Stockyards Administration?

Mr. JONES. The poultry transactions of red meat firms, yes.

Senator COCHRAN. And red meat, too.

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Mr. JONES. Yes.

Senator COCHRAN. I mean this would not affect red meat at all.

Mr. JONES. No, it would not affect red meat. It would affect combination firms, and their poultry transactions would still be subject to our jurisdiction. You really from a practical standpoint cannot separate the two. You find firms selling both red meat and poultry to the same firm. We find them putting both poultry and red meat in the same product. So from a practical standpoint of the implementation of the act, you could not separate those transactions in the same firm.

Senator COCHRAN. How much of your work is devoted to inspecting the poultry industry? Could you give us a percentage? Is it 50 or 10 percent?

Mr. JONES. Oh, our resources, I would think, in money and manpower would be something over $400,000 per year, which would be approximately 5 percent of our budget. So we would have about 95 percent in the red meat area and about 5 percent in poultry.

Senator COCHRAN. Senator Zorinsky?

Senator ZORINSKY. Thank you, Mr. Chairman.

Mr. Jones, what does your organization do that cannot be done by the Department of Justice, the Federal Trade Commission or State enforcement agencies?

What services do you perform in the way of supervision or investigation that could not be done by those entities I just mentioned?

Mr. JONES. The P&S Act, of course, is rather unique in that it does go farther than either of the major antitrust laws specifically with respect to meat and meat products. I guess the degree would be what would be done traditionally as you look over the area, and I think that in the days that FTC had major responsibility for those areas, it did not work those areas really.

But the P&S Act is different, and it is much more strict in many ways than the FTC Act is.

Senator ZORINSKY. For instance, there were some violations of your current jurisdiction. Could they or could they not be prosecuted?

Mr. JONES. Well, let me give you one example. To my knowledge, FTC has never brought a commercial bribery case.

Senator ZORINSKY. Could they?

Mr. JONES. I would have to ask the attorney on that. To my knowledge, they never have, and that is one of our continuous functions.

Senator ZORINSKY. Could a State USDA, through their attorney general's office?

Mr. JONES. State Department of Agriculture?

Senator ZORINSKY. Yes.

Mr. JONES. Not effectively because this is primarily an interstate business and not an intrastate business.

Senator ZORINSKY. If a packer were located within their jurisdiction, couldn't they have?

Mr. JONES. Yes, but there would be very few firms that would not either sell interstate or buy interstate, and so the out of State transactions would be under our jurisdiction.

Senator ZORINSKY. I have found that from the inception of this act to the creation of "60 Minutes," there has been a marked in-

crease of focus on violation of all of these natures when there is a media focus of attention into violation of these types, and everybody gets religious and utilizes powers they never realized they had before.

Mr. JONES. That would be true, Senator, mainly on issues involving public health and safety, and this, of course, P&S is not involved in at all. We do not really get that much press attention, nor is it typical for the emotional kinds of climate to be surrounding any enforcement of P&S that surrounds something like meat inspection where you are talking about health and safety.

Senator ZORINSKY. Then your jurisdiction is strictly in the areas of manipulation of marketing and pricing?

Mr. JONES. Strictly in the economic area, in marketing. Payment, payment protection, and what you would commonly and rightfully call encountering white-collar crime, fraudulent practices. Economic as contrasted to health and safety.

Senator ZORINSKY. How many cases have you successfully prosecuted in poultry since your jurisdiction was extended to that area?

Mr. JONES. You mean since the 1935 amendment?

Senator ZORINSKY. Well, since you have had access to jurisdiction over poultry.

Mr. JONES. Processed poultry we would say came in with the passage of the act in 1921. I would not know how many cases since 1921 we have brought against poultry. We do about 2,000 investigations per year.

Senator ZORINSKY. In poultry?

Mr. JONES. No, total, and I would presume 2 or 3 percent of those would be poultry, probably around 3 percent.

Senator ZORINSKY. Of that 2 or 3 percent, how many are prosecuted to its conclusion?

Mr. JONES. Typically they drag on and there is great time delay. We have two formal cases pending now. Usually every case is brought to a conclusion. It does take time.

Senator ZORINSKY. The reason I ask this question is, being on the Agriculture Committee for the past 8 years, I really have not had a huge deluge of mail from people requesting to be protected, not that there is not some of this going on, I assume.

Mr. JONES. I think that that just speaks for the job that we do. We attempt to keep the complaints from coming to the Hill, very frankly, and we attempt to keep them out of the press as well.

Senator ZORINSKY. I will tell you one thing then. The IRS is doing a lousy job.

Mr. JONES. Congressman Whitten always says, "Well, you must be doing all right because I'm not getting any adverse mail."

Senator ZORINSKY. That is what I tell my constituents.

Thank you.

Mr. JONES. But we do have a lot of cases in progress, and we would be very glad to sit down and brief you at any time on the cases in progress.

Senator ZORINSKY. Thank you.

Thank you, Mr. Chairman.

Senator COCHRAN. Thank you, Mr. Jones, for being here and helping our committee in our review of the bill. Thank you.

Mr. JONES. I do not suppose that we should remind Senator Zorinsky that American beef bankruptcy did happen in Nebraska, and that is what brought more authority actually in 1976.

Senator COCHRAN. Our next witnesses are a panel of witnesses, including Joe Frank Sanderson of Sanderson Farms, Laurel, MS. I think probably we will have this panel sit on this side of the table here. Joe Hatfield, president of Fieldale Corp. of Baldwin, GA, and Harold Sylvest, president of Poultry Products, Inc., Montgomery, AL.

You all may have a seat right here. We appreciate very much your being here today. We have statements which we will make a part of the record in full. We thank you for these.

We would like to have each of you make your presentation to the committee, and then we will have an opportunity to discuss your statements.

Joe Frank, could you lead off, please?

STATEMENT OF JOE FRANK SANDERSON, SANDERSON FARMS, INC., LAUREL, MS

Mr. SANDERSON. Thank you, Senator.

My name is Joe Frank Sanderson, and I am chairman and chief executive officer of Sanderson Farms, Inc. of Laurel, MS.

First of all, I want to say that I appreciate the opportunity to appear here today to express our support for S. 2781, on behalf of the Mississippi Poultry Association, the Arkansas Poultry Federation, the North Carolina Poultry Federation, and the Texas Poultry Federation and its affiliates.

The bill we support is very simple. It would simply make clear that the Packers and Stockyards Administration of the U.S. Department of Agriculture has no jurisdiction over the marketing of processed poultry products by a poultry processor who also deals in live poultry.

We do not believe that P&S has that jurisdiction now, but the relevant language in the law is ambiguous and demands clarification.

If this bill passes, the Department of Justice, the Federal Trade Commission and State enforcement agencies would continue to have jurisdiction over the marketing of processed poultry products.

Since the bill we support would amend the Packers and Stockyards Act to make it reflect Congress' historical intent, I thought it might be helpful to review for you the history of the act.

We believe an understanding of the history makes it clear that Congress never intended the Packers and Stockyards Agency to regulate the marketing of processed poultry by integrated processors.

My friends, Joe Hatfield and Harold Sylvest, will then discuss what the bill would do and why it is needed and why the bill would not affect the rights of farmer growers.

The history of the act shows that when Congress wished to regulate an industry under the Packers and Stockyards Act, it was very clear about its intent. In 1921, it determined to regulate the meat packing industry after a lengthy investigation by the Federal Trade Commission which resulted in a report that abuses were

rampant in the industry, and that the big meatpackers threatened to monopolize the Nation's food supply by branching into other areas of food manufacturing.

There was also a Federal antitrust section challenging the packers' alleged monopolistic and anticompetitive conduct.

The legislation which resulted authorized the U.S. Department of Agriculture to take action against unfair and related practices of meatpackers. Meatpackers were defined to include firms who sold, in addition to meat products, poultry and poultry products, if such firms also purchased livestock for purpose of slaughter.

The legislation did not authorize the Department to take any action against sellers of poultry products unless they also qualified as meatpackers.

In 1935, the Packers and Stockyards Act was amended to remedy a situation involving racketeering and extortion associated with the marketing of live poultry in New York City. This objective was accomplished by adding the words "live poultry dealers and handlers" wherever "packers" appeared in the act, and prohibiting them from engaging in unfair acts, just as meatpackers had been forbidden to commit them.

There was no language in the amendment that would lead anyone to believe that a live poultry dealer's sales of processed poultry would be covered.

In enacting the amendment, Congress did not express any concern with the marketing of slaughter poultry, and in fact, the commercial processed poultry industry was then insignificant.

The Packers and Stockyards Act was again amended in 1958, this time to limit its jurisdictional scope in order to prevent firms who were not primarily meatpackers from escaping the jurisdiction of the Federal Trade Commission over their nonmeat activities. Before that amendment, persons who qualified as meatpackers, covered by the Packers and Stockyards Act, were exempt entirely from the jurisdiction of the Federal Trade Commission.

This led to some strange results, to say the least. For example, the Federal Trade Commission was challenging certain grocery chains for inducing and receiving discriminatory promotion allowances. One of these chains operated a meat slaughter and packing plant and, therefore, qualified as a meatpacker.

However, the products involved in the Federal Trade Commission complaint were not meat or poultry products. Nevertheless, the chain successfully asserted a total exemption from the Commission's jurisdiction because its slaughter and packing operations made it a meatpacker, subject only to Packers and Stockyards jurisdiction.

This type of unforeseen problem is what led to the 1958 legislation. Congress decided to narrow the scope of USDA's jurisdiction, thus extending the FTC's jurisdiction. The USDA would have jurisdiction over meatpackers only with respect to the traditional meatpacker products, products listed in the definition of "meatpacker" since 1921, and remember, those products included processed poultry. It was covered when marketed by a meatpacker.

However, inserting this product list into the new amendment, which was designed to reduce P&S jurisdiction, resulted in the ap-

parent coverage of unfair practices involving the same products by the live poultry dealers or handlers.

In effect, the language added in 1958, which limited coverage as to packers, appears, and I want to emphasize the word "appears," to give the Packers and Stockyards Administration jurisdiction over processed poultry transactions by live poultry dealers, a term which might be construed as covering most poultry processors today, since almost all have a few purchases or sales of live poultry.

That interpretation is, of course, improper in our view. Congress did not intend in 1958 to do anything about USDA jurisdiction over live poultry dealers and handlers. It certainly expressed no concern about, or even any interest in, their practices with respect to processed poultry.

We think it is very clear that this chain of amendments to the Packers and Stockyards Act has provided what can be called, at most, an accidental basis for the U.S. Department of Agriculture's claim of jurisdiction over process broiler marketing by live poultry dealers.

Interestingly, although on several occasions in the 1960's and 1970's bills have been introduced which would explicitly give the Department jurisdiction over transactions in processed poultry, none has ever been enacted. We hope that Congress acts quickly to repair the results of this historic accident.

I would like to add, Mr. Chairman, if I may a comment or two to my prepared remarks.

We are pleased that the Packers and Stockyards Administration is not opposed to exempting processed poultry sales of integrated poultry processors from the Packers and Stockyards Act. If the administration is willing to forgo jurisdiction over processed poultry sales, there is certainly no reason to seek jurisdiction over those sales merely because the poultry processor also happens to own a downstream distribution operation which incidentally handles meat as one of its lines.

This legislation is construed by the National Broiler Council to remove entirely Packers and Stockyards' jurisdiction over the processed poultry sales by poultry processors.

Thank you, Mr. Chairman.

Senator COCHRAN. Thank you.

Mr. Joe Hatfield, you are next.

STATEMENT OF JOE HATFIELD, PRESIDENT, FIELDALE CORP., BALDWIN, GA

Mr. HATFIELD. Thank you, Senator.

I am very happy to appear here today to express support for S. 2781. I am president of Fieldale Corp. in Baldwin, GA, and I am testifying today on behalf of the National Broiler Council and National Turkey Federation, the Georgia Poultry Federation, Delmarva Poultry Industry, Inc., and the Pennsylvania Poultry Federation.

The purpose of this bill is straightforward. Mr. Sanderson has just explained how a series of amendments to the Packers and Stockyards Act led to language that could be taken to give the P&S

Administration the right to regulate a poultry processor's sales of processed poultry.

He also explained that we think that jurisdiction, if it exists at all, was not intended by Congress. The bill would change the language of the act to reflect Congress' original intent and would simply remove a live poultry dealer's sales of processed poultry from the jurisdiction of the USDA.

Our industry would not have believed the bill necessary before the 1982 decision in the case of *U.S.* v. *Perdue Farms*. In that decision, a 2-to-1 majority of a second circuit court of appeals panel held that the Packers and Stockyards Act covered alleged exclusive dealing agreements in processed broilers. The result was based on Perdue's sporadic sales of excess live poultry to other processors and on sales of spent hens, all accounting for less than one-half of 1 percent of Perdue's total broiler sales.

All members of the appeals court panel agreed that Congress had never expressed any concern with the practices or competitive health of the processed broiler industry. A strong dissenting opinion supported our position that P&S has no jurisdiction over a poultry processor's processed sales.

The two-judge majority, however, concluded that it was bound by the reading of the literal language of the P&S Act, as amended in 1958, unless it could be shown by convincing evidence that Congress intended not to cover transactions by poultry processors in slaughtered poultry.

Since Congress never focused on the processed poultry industry at all, such a showing could not have been made. Concurring Judge Newman strongly suggested that congressional relief might be appropriate.

I want to make one point clear, and I know I speak for the three of us on this panel and all of the groups we represent, when I say the poultry industry is not seeking to escape regulation. We have always considered that we are bound by Federal antitrust and trade regulation laws and by related State laws. If this bill passes, we would not be an unrelated industry.

The Justice Department, the Federal Trade Commission, State antitrust agencies, and State consumer protection agencies will have jurisdiction, and by the way, I am advised that there is considerable authority that FTC can attack commercial bribery, discrimination, and other practices that Mr. Jones mentioned under the Robinson, Patman, and FTC Act.

The regulatory approach of P&S is one of detailed, specialized, virtually public-utility type of regulation. That type of regulation should be imposed on an industry only when there is a strong showing of need for it, and Congress apparently found need to impose that kind of regulation on the meat packing industry in 1921. At least it had a multivolume report arguing for such regulation.

Congress also relied on a strong showing of abuses in certain metro live poultry markets when they extended the act to live poultry dealers in 1935. But no comparable showing has or can be made with respect to the modern processed poultry industry.

The modern broiler industry produces low-cost, high quality, nutritious, healthful chicken meat whose per capita consumption has

increased almost every year over the last 20 years and now stands at more than 50 pounds. In contrast, red meat consumption has declined over the last decade.

The highly competitive nature of our industry is one of the best insurances that poultry will continue to be available to the consumer at a very economical price compared to other foods. There is no justification for specialized, virtually public-utility type trade practices regulation of processed poultry marketing.

The processed poultry industry should be subject to no different statutory provisions and no other enforcement agencies than are other sectors of the food industry, such as the fish industry, the baked goods industry, and the canned and frozen food processing segments of the food industry.

The Government should not add a layer of regulation and increase controls unless it is really necessary, and it is my view that it is not necessary for our industry.

Thank you very much.

Senator COCHRAN. Thank you for your statement, Mr. Hatfield. Harold Sylvest is next to testify.

STATEMENT OF HAROLD SYLVEST, PRESIDENT, POULTRY PRODUCTS, INC., MONTGOMERY, AL

Mr. SYLVEST. Mr. Chairman, my name is Harold Sylvest. I am president of Poultry Products, Inc., Montgomery, AL, and the immediate past chairman of the Alabama Poultry & Egg Association. I am appearing today on behalf of the Alabama Association, as well as on behalf of the Southeastern Poultry & Egg Association, the Florida Poultry Federation, Inc., and the Virginia Poultry Federation.

These organizations strongly support S. 2781.

The processed poultry industry is one of the most efficient, if not the most efficient, segment of the food manufacturing industry. We believe our members have an enviable record of providing the Nation's consumers with a healthful, low priced food product.

We also believe we have an enviable record of freedom from anticompetitive abuses. We do not believe that such an industry should be subject to the day-to-day public utility-type regulation by a specialized Government agency, such as the Packers and Stockyards Administration.

Such regulation inevitably retards efficiency and increases costs, and should not be imposed unless it is clearly necessary. We believe that our members' processed poultry sales should be subject to the same nonspecialized regulation as are most other segments of the food manufacturing industry.

As the other panelists have explained, we do not believe that the Packers and Stockyards Administration has jurisdiction over processed poultry sales. If the Agency does have jurisdiction, it is the result of an accident of legislative drafting which was intended to have a very different result.

Only one court has addressed the issue. The second circuit court of appeals invited the processed poultry industry to ask Congress to repair that accident of drafting. That is why we are here today.

Mr. Sanderson and Mr. Hatfield have done an excellent job of explaining why we need this legislation and what it would do. It would delete the questionable jurisdiction over processed poultry products which the Packers and Stockyards Administration of the U.S. Department of Agriculture has asserted recently, while leaving the Agency's right to regulate transactions of live poultry untouched.

I would like to address an issue which may be of some concern to some members of the agricultural community, namely, what this bill would not do.

It would not affect the rights of farmer-growers who raise chicks until slaughter age for our poultry processors.

It will not in any way alter the Packers and Stockyards Administration's existing ability to regulate dealings between those growers and processors. All of the growers' existing protections under the Packers and Stockyards law and regulations would be preserved.

It is not the intent nor the result of this bill to affect them in any way.

The Packers and Stockyards Administration would be free to continue to exercise its existing authority over transactions in live poultry. Unfair, discriminatory, deceptive and anticompetitive practices by the live poultry dealer or handler with respect to live products would still be prohibited by the P&S Act.

Thus, whatever authority the Agency has now to regulate relations between growers and processors, for example, with respect to contract terms, provision for information to growers, prompt payment, to name just a few, would continue.

The loss of the Packers and Stockyards Administration's claimed jurisdiction over transactions in processed poultry would not and could not adversely affect growers in any way.

The growers' interest lies in obtaining a fair price for their products, being paid promptly, and not being discriminated against. These interests would continue to be overseen by P&S.

The growers cannot have any interest in the methods by which processors market their products other than to hope that they market it successfully so that they can place more chicks with the growers, and even continued regulations by P&S could not insure that result.

Healthy competition in the poultry processing industry benefits growers as well as consumers. This bill would mean that several agencies more experienced than P&S in antitrust and consumer protection matters involved in the processed food distribution industry would have the authority to intervene, if necessary, to preserve that competition.

Therefore, if this bill would affect growers at all, it would be to their benefit.

Thank you very much, Mr. Chairman. I appreciate the opportunity to be here today.

Senator COCHRAN. Thank you, Mr. Sylvest, for your comments.

Let me be sure I understand the thrust of the presentation that has been made by this panel.

Is it correct to say that your relationship with the growers and the ability of the Packers and Stockyards Administration to review

that relationship, agreements and contracts and payment to them and discrimination allegations, would continue unchanged even if this bill was enacted? Is that your understanding?

Mr. SANDERSON. This bill does not address that issue at all.

Senator COCHRAN. So you would continue to be regulated by Packers and Stockyards in your relationship with your growers?

Mr. SANDERSON. We would expect that.

Senator COCHRAN. But this bill would clearly prohibit regulation in the marketing, in your marketing activities.

Mr. SANDERSON. That is correct.

Senator COCHRAN. Packers and Stockyards though, under the law, has the authority to regulate marketing of other processed meats. My question is why should the processed poultry be treated any different from other kinds of processed meats.

Mr. SANDERSON. The answer to that, of course, is we are not even addressing that. We do not feel it is appropriate for our industry to address the marketing problems or lack of problems of other industries.

Senator COCHRAN. Is there right now, in your view, competition of sufficient quality in the marketing of processed poultry so that specific authority in the Packers and Stockyards Administration for regulation is unnecessary?

Mr. HATFIELD. There is intense competition. Poultry is generally marketed from a producer in truckload quantities, which means that it can reach any of the 48 States, economics allowing it. So any market that a producer can reach, if he wants to, he will usually try it. So it is very intense.

Senator COCHRAN. What is the reason, in your judgment, why it is necessary to remove this jurisdiction from the Packers and Stockyards? Is it to make it clear that there is no jurisdiction to regulate marketing? Mr. Hatfield, do you have an opinion on why it is necessary to make this change?

Mr. HATFIELD. Well, to my knowledge, the Department never tried to exercise this authority until about 1981 or 1982, and my experience in this industry goes back to 1951 when I first started earning my living in it. The Agency did at that time start exercising their perceived authority. They did audit my company on marketing practices. We had been audited from time to time in the past on live production areas, which we expected. It was generally routine, and as a rule, it takes a day or 2 or a few days to go through that type of audit. This marketing audit took the better part of a year with three investigators a large part of the time, was more intense and took more man-hours of support on our part than an IRS audit, examined more records than an IRS audit does, and there was no complaint and no allegation of complaint by the Agency to my company.

I just do not think that type of oversight is what Congress intended. I think the act needs to be amended to clarify that.

Senator COCHRAN. Do you have any knowledge of any other such audits occurring in the industry among other processors?

Mr. HATFIELD. I have no personal knowledge of it. It may well have happened.

Senator COCHRAN. This panel represents a large number of processors in operations covering several States, I notice in your testi-

mony. I am trying to get on the record if this is the only such instance that occurred in the country. Do you know whether that is true or not?

Mr. HATFIELD. I do not know whether that is true or not. I do know that the associations that we represent support the proposed legislation.

Senator COCHRAN. I understand that. I just wondered if there had been similar experiences elsewhere in the country. You do not know that?

Mr. HATFIELD. I do not have that information.

Ms. McDermott: Mr. Chairman.

Senator COCHRAN. Yes.

Ms. MCDERMOTT. I am Kathleen McDermott. I am outside counsel for the National Broiler Council.

Mr. Hatfield said we do not have personal information. Since it appears to us that it is only recently that P&S has been interested in getting active in this area, we may not have as many examples to point to as if they had been active in this area for the last 20 years, but we think Mr. Hatfield's experience is indicative of what other companies might expect if P&S's jurisdiction over marketing of processed product were, in fact, confirmed.

Senator COCHRAN. This case in the second circuit that is referred to in your testimony, did it involve an audit similar to the one that you had? Maybe I can ask counsel that question. Was it a challenge to the jurisdiction to engage in an audit of processed poultry product?

Ms. MCDERMOTT. The challenge to the Agency's jurisdiction occurred, to the best of my information, after the complaint was filed, and we would note that it was only the jurisdictional issue that was the subject of the second circuit decision.

The case was never litigated on the merits. Mr. Perdue was in the process of preparing a petition to the Supreme Court for certiorari when the Justice Department who was prosecuting on behalf of the Department of Agriculture offered to drop the case entirely if Mr. Perdue would not take the jurisdictional issue to the Supreme Court.

That is the most we know about the procedural history of that case.

Senator COCHRAN. Senator Huddleston, do you have any questions or comments?

Senator HUDDLESTON. I have a statement, Mr. Chairman, that I will put into the record.[1]

I appreciate the fact that you are holding these hearings, and I hope you can clarify the intent and application of the law through this process. I look forward to seeing all of the testimony that will be presented today.

Senator COCHRAN. Thank you very much.

I have no other questions of this panel. Again, we thank you for being here and compliment you on the excellent statements that you have made. Your testimony will be very helpful to the committee.

Thank you very much.

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[1] See p. 29 for the prepared statement of Senator Huddleston.

Our next panel consists of witnesses who include James Miller, assistant legislative director of National Grange, who is accompanied by Richard Burchfield of Port Royal, PA, and Earl Parsons of Shade Gap, PA; Ron Shaffer of the Pennsylvania State Grange of Harrisburg; Stuart Proctor, Jr., assistant director of national affairs of the American Farm Bureau Federation; and Robert Weaver, who is a poultry grower and a member of the Pennsylvania Farmer Association of Snyder County, PA.

Let me welcome each of you to the hearing, and thank you for being here. We have a copy of the statement of the National Grange and Mr. Shaffer of the Pennsylvania State Grange and the farm bureau, which is to be presented by Mr. Proctor. These will all be made a part of the record in full, and we would encourage you to make summary comments from those written statements.

Mr. Miller, you may proceed.

STATEMENT OF JAMES MILLER, ASSISTANT LEGISLATIVE DIRECTOR, NATIONAL GRANGE, ACCOMPANIED BY RICHARD BURCHFIELD AND EARL PARSONS

Mr. MILLER. Thank you, Senator. I will try to be just as brief as possible.[1]

Let me begin by saying that the National Grange has been concerned with developments in the poultry industry for some time. Yet, its incredible growth over the years and the industry's ability to provide such wholesome food at relatively affordable prices has been truly a testimony to the industry's importance in this country.

The Grange, however, is concerned that the bill sponsored by Senator Heflin is a step, but it is a step in the wrong direction as far as the Grange is concerned. Our intention is that whether or not Congress intended to bring processed poultry products under P&S at the time should be viewed in light of the industry as it is right now.

Our contention is that the industry has evolved and matured to the point where perhaps an entirely different review of the industry and its regulatory setting would be in order.

Today the processed poultry industry is not confined just to the marketing of dressed poultry carcasses and poultry parts. There are hundreds of processed meats, meat products, and canned and frozen foods that contain poultry meat. We see this entwined relationship with poultry processors and the red meat industry as being very, very significant.

If the intention of the bill is to remove the ambiguity of P&S's relationship to the poultry industry, we contend that perhaps that ambiguity might, in fact, be extended.

If the intention is to remove the jurisdiction of the act from covering processed poultry, the amendment is discriminatory in that fact simply because there is such incredible competition right now, I believe, between red meat and poultry, and that, in fact, might leave the red meat industry at somewhat of a comparative disadvantage.

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[1] See p. 30 for the prepared statement of Mr. Miller.

We see the processed poultry industry as being far more akin to the red meat industry than the baking or canned and frozen food processed industry.

The competitiveness of the industry, in our estimation, is one of the most overwhelming and compelling reasons to treat the poultry industry under P&S, and the folks here today accompanying me will have some individual and very personal experiences that perhaps might be of interest to this committee.

If the grower of the poultry products is to be protected as the witnesses before have stated, our intention is that their protection should be extended under the act.

The Grange believes that enactment of this bill would be a move away from providing poultry growers the protection that they need and deserve. We fully realize that many of the firms do not have the financial problems that will be detailed by the other witnesses, and they do, in fact, pay their growers in a timely manner. Unfortunately, that is not always the case.

We would like to see P&S authority extended to the poultry industry to provide for requirements of prompt payment, packer trust, the implementation of the Administrative Procedures Act, bonding, the authority to impose temporary restraining orders and, in fact, civil penalties. These provisions in the act pertaining to the red meat industry have worked well, and we would anticipate that to be the result should they be extended to poultry.

The National Grange policy is quite explicit in this regard. Our delegates at our last annual meeting instructed the National Grange to seek legislation "to amend the Packers and Stockyards Act so as to provide the live poultry grower who raises birds for the live poultry processor the same financial protection provisions regarding prompt payment as provided in the livestock industry."

We see this issue as one of equity, fairness, and good government, and simply by extending the P&S provisions to cover poultry, we would see more enhanced competition among the various protein foods. This ultimately will be to the benefit of the consumer.

We think it is important to know, first off, that there is now the rule of the land that fresh fruit and vegetables have some financial protection through prompt payment provisions. There is currently pending before the House of Representatives a bill that would provide those same protections to dairy farmers.

We would see if the dairy bill does become law, that would leave the live poultry grower alone among the specialty producers as being without financial protection that the amendments would provide.

I appreciate the opportunity to be here today, and I would be happy to answer any questions.

Thank you, Senator.

Senator COCHRAN. Thank you, Mr. Miller. I appreciate your being here and the detailed statement that you provided to the committee.

Mr. Ron Shaffer, Pennsylvania State Grange.

STATEMENT OF RONALD E. SHAFFER, PENNSYLVANIA STATE GRANGE, HARRISBURG, PA

Mr. SHAFFER. Good morning, ladies and gentlemen of the subcommittee.

I would like to thank you now for this opportunity to address the committee. I am Ronald E. Shaffer, and I represent 42,000 members of the Pennsylvania State Grange, with grave concern for our family poultry farmers.

We believe that Senator Heflin's proposed amendment would preclude a grower from access to a processor's records in instances where the Packers and Stockyards Act applies to transactions of poultry processors in slaughtered poultry. This would weaken the act severely.

A contract grower is paid in accordance with the contract he has with the poultry processor. In some cases it is live, and in some cases it is on the yield at the time of slaughter. However, in a lot of cases, they are not paid by the bird; they are paid according to the yield of the poultry meat from each bird raised. That yield can only be determined after slaughter. The amendment would prohibit any regulation by the Packers and Stockyards Administration over the relationship between growers and processors.

As a result, the grower can only turn to the courts for help if he believes his payment was in error.

Section 503 of the Packers and Stockyards Act limits the authority of the Packers and Stockyards Administration to enforce rules governing the business of buying or selling live poultry in commerce for the purpose of slaughter. To enforce this provision of the act, P&S must assess the slaughter records and meat yields of birds, financial condition, and so forth.

It is our understanding that the amendment would prohibit Packers and Stockyards from obtaining this information. We also believe Senator Heflin's amendment could lead to problems for the growers in the future that are not now evident.

The Pennsylvania State Grange is opposed to Senator Heflin's amendment because of the aforementioned problems for growers. We are, rather, in favor of amendments to strengthen the act relating to poultry.

We would like to see the Senate Agriculture Committee take advantage of this opportunity to study the act as it relates to the coverage of the pountry industry. We are especially interested in amending the act to provide the poultry processor, contract grower, egg producer, and contract egg producer the same prompt pay provisions that P&S provides in its provisions to the livestock producer.

We base this request on the following facts. The majority of our poultry producing members are contract growers for large, integrated poultry processing firms or feed manufacturers. From time to time, they have had difficulty in collecting their grow-out fees under the terms of their contracts.

A grower payment can be as much as 16 weeks late. In other cases, the integrateds have declared bankruptcy, owing the contractor millions of dollars in back fees. Many have lost their markets

because most integrators have enough grower contracts to supply their slaughter capacity and are not ready to pick up new growers.

You could not build a new grower complex in Pennsylvania and expect to market your birds without a contract. A recent bankruptcy in Pennsylvania cost 90 growers and one hatchery $2,500,000.

At the present time the growers do not have much chance of recapturing any of their money in the bankruptcy court as unsecured creditors. At the present time they may even be required to pay some of the money they have received in late payment for the birds' yield back to the bankruptcy court. They need protection.

Many of these grower houses would be empty now if it were not for the recent Avian influenza problem in Pennsylvania. Integrators who were unable to obtain enough birds for slaughter because of downtime and cleanup picked up some of these growers. Some are raising pullets to resupply layer houses affected by Avian influenza. Some are still empty.

It would seem to me that 7 days after delivery to the processor would be a reasonable time to expect payment, and would certainly give enough time for paperwork to be completed and the check mailed by the processor.

Senator Specter has introduced an amendment to the Packers and Stockyards Act requiring payment to contract growers within 7 days after delivery to the processor. This act may be cited as the "Contract Chicken Growers Protection Amendment of 1984." I have 1983 in my statement. We have been working on this for some time. The Pennsylvania State Grange supports this amendment.

In 1983, according to the P&S people, 21 companies controlled 90 percent of the production and slaughter of broilers in the United States. That number may be smaller now because of recent buyouts.

Today, approximately 3,000 companies or individuals control most of the egg production in the United States through contracts or marketing. I got that from a marketing survey by a computer company that manufactures software. They did a survey on the marketing software that was available for the poultry industry, and they found that there was not enough market out there for them to go into it, and they came up with that fact.

Egg producers also have problems collecting for eggs shipped. Some processors are back 4 and 5 weeks on payments for eggs shipped. We have had reports of even longer delays in payment.

On Saturday of last week, I talked to an egg producer who is still trying to collect for eggs shipped in February. Needless to say, he is no longer shipping to this processor.

A 100,000-layer complex producing at 80 percent production ships 6,666.6 dozen eggs a day at 50 cents a dozen. That equals $3,333.33. This is a considerable amount when you compare it to one steer at $700, one hog at $110, both protected and regulated by the P&S Act.

It would seem reasonable to also protect egg producers. In many instances, the consumer has purchased and consumed the birds or the eggs before the grower or egg producer is paid. Why should the farmer provide financing? They are in business to make a profit just like the processor. Why should he provide interest-free money?

Poultry growers have reported to us that sometimes the processing company that has the contract with the grower, egg producer or contract egg producer also owns the feedmill that supplies the producer with his feed. The processor does not pay the producer or the grower on time.

Therefore, he cannot pay his feed bill, losing a discount for cash. Also, the feedmill, in turn, charges interest on unpaid bills.

In conclusion, the Pennsylvania State Grange strongly urges prompt payment for broiler growers and egg producers to protect family poultry farmers from financial losses beyond their control. In the past 3 years, the number of family egg producers has dropped dramatically. Family poultry farmers have dropped 40 percent in 3 years.

The family poultry farmers, be they contract growers, egg producers, or contract egg producers, need the protection of the Packers and Stockyards Act of 1921.

I think the testimony of the two producers that are here will enlighten you a little more on their problems.

Senator COCHRAN. Thank you very much, Mr. Shaffer. Stuart Proctor, Jr., please proceed.

STATEMENT OF STUART PROCTOR, JR., ASSISTANT DIRECTOR, NATIONAL AFFAIRS, AMERICAN FARM BUREAU FEDERATION

Mr. PROCTOR. Thank you, Senator.

My name is Stuart Proctor. I am assistant director of national affairs for the American Farm Bureau Federation. I would like to submit a copy of my statement for the record and summarize it.[1]

Senator COCHRAN. It will be made a part of the record. Thank you for giving it to us.

Mr. PROCTOR. As you may know, the Farm Bureau has been actively involved in Packers and Stockyards regulation programs since the Agency was created in 1921. We agree that jurisdiction over poultry marketing is now unclear in the act.

However, we think that the lack of enforcement of poultry marketing is probably as much a function of the few resources that are available to Packers and Stockyards as much as it is a function of unclear jurisdiction.

We feel that enactment of S. 2781 is premature without first investigating and assessing the legislative impact on the industry. After hearing Mr. Jones' comments this morning, I think we need also to analyze the impact on the red meat industry, as well.

This assessment may indicate the current conditions warrant strengthening of the act rather than weakening.

As you may know, the Packers and Stockyards Administration is now conducting two major investigations of commercial bribery against meat wholesalers and brokers. Poultry producers are keenly interested in these cases because they could result in processors having an unfair marketing advantage, and also because those bribes that are paid come out of profits which could be returned to growers.

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[1] See p. 32 for the prepared statement of Mr. Proctor.

Before passing S. 2781, we encourage the subcommittee to request the Packers and Stockyards Administration to conduct an assessment, and on page 2 of my statement, I have listed roughly four areas or questions which we think would be appropriate to be answered by such a study.

I draw your attention to No. 4, which asks the question, why are there differences between the regulation of the poultry industry and the red meat industry.

The latter point is of particular interest to the Farm Bureau. For a number of years, we have advocated prompt pay provisions for live poultry to protect growers who experience unreasonable delays in payment. Red meat producers have had this protection since the mid-1970's.

In this Congress, we think it is interesting that there have been laws passed to protect grain producers when their elevators go bankrupt. This committee also saw fit to pass the Perishable Agricultural Commodities Act, which protects fresh fruit and vegetable producers. This act, as you know, set up a trust provision so that fresh fruit and vegetable growers would be paid promptly. This is the same kind of protection that we think is necessary for poultry growers.

Farm Bureau will support legislation which will give poultry producers these same kinds of payment assurances, and we also draw your attention to Senator Specter's bill, S. 2997, which has a prompt pay provision.

We think there is need for this kind of legislation. Recent business failures, bankruptcy losses are on the increase. In fiscal years 1978 to 1982, there were only two firms that went bankrupt. However, in 1983 alone there were five bankruptcies, which affected 1,900 poultry growers, who were owed about $14 million.

Since World War II, there has also been a tremendous concentration in the broiler industry. In fiscal year 1983–84, there were 8 orderly closings and 18 sales. From 1973 to 1984, the number of processors was reduced by 71 firms as a result of mergers and acquisitions. We think the smaller number of processors is another reason for prompt pay protection for poultry growers who do not have the flexibility to choose between a number of processors.

I also remind you that the Senate in 1983 passed prompt pay protection for poultry processors, and that was at a request of the poultry processing industry who wanted to have the Government pay them promptly, within 7 days, for the products that they were selling to the Government. This same kind of protection, we think, is reasonable for poultry growers.

That is a summary of my statement.

Senator COCHRAN. Thank you very much for your contribution to the hearing, Mr. Proctor, and for the statement that you have made available to us.

Our final witness in this panel is Robert Weaver of Snyder County, PA.

You may proceed.

STATEMENT OF ROBERT WEAVER, REPRESENTING PENNSYLVANIA FARMERS' ASSOCIATION, SNYDER COUNTY, PA

Mr. WEAVER. Good morning. My name is Robert Weaver. I am here representing the Pennsylvania Farmers' Association, the State's largest general farm organization, with over 22,800 farm families. The Pennsylvania Farmers' Association is affiliated with the American Farm Bureau Federation, the world's largest general farm organization with over 3.2 million farm families.

On behalf of our association, I would like to thank the members of this subcommittee for the opportunity to express to you our views relative to poultry legislation you are considering.

I am a poultry grower in Snyder County, PA. In recent years, I have had to endure a financially devastating experience which many other poultry growers have also had to endure.

In April of 1983, the processing company which I had contracted with to raise poultry went bankrupt. Until a year and a half prior to the bankrtupcy, the processing company was paying the poultry farmers within 2 weeks after delivery of poultry to the plant.

At that time, the processing company began to delay payment to me and other poultry producers in order to meet other financial interests. The processing company was able to do this because the contract we had to enter into did not provide for a maximum time period for the payment of the poultry we delivered.

As time progressed, I was further foresaken by the efforts of the processing company to meet other financial responsibilities. Since the company was not required to make prompt payment, I and other poultry farmers were placed on a lower payment priority. The company continued to extend the period between delivery of poultry and payment to the point where we were receiving payment 4 months after delivery of poultry.

In the meantime, I had to incur personal costs for purchase of chicks for raising and operational and electricity costs to begin and raise a new flock of poultry, with only hope that the company would pay for the last flock I raised and would pay for the new flock when raised in the future.

On the day the processing company filed for bankruptcy, I had raised two full flocks of poultry for which I had not received payment. I personally lost $25,000 as a result. A payment which I did receive just prior to the bankruptcy may be recouped by the trustee in bankruptcy. If so, I will be forced to pay back an additional $14,000.

This is not the end of the story. The bankruptcy of the processing company forced me to seek another market for the poultry I would raise. I had to search 6 months before I could find another company to market my poultry.

Since I had no market for my poultry, I had to go through this entire 6-month period without receiving any income.

The Pennsylvania Farmers' Association recognizes the differing situations which exists in the marketing of poultry. The recent trend of consolidation of processors and wholesale purchasers into fewer, large-scale operations has made it increasingly difficult for poultry producers to effectively bargain for prompt payment and payment security in the raising and delivery of poultry.

The Pennsylvania Farmers' Association strongly supports:

First, payment to poultry producers within 15 days of delivery of raised poultry to wholesale purchasers or payors of poultry raising contracts; and

Second, the statutory establishment of poultry producers as secured first line creditors on bankruptcy actions of purchasers of poultry products or payors of poultry raising contracts.

Congress has recognized the disparity of bargaining power between producers and wholesale purchasers in other commodities, and the inability of producers in those commodities to negotiate fair provisions for prompt payment and payment security, through the enactment of the Packers and Stockyards Act and the enactment of recent amendments to the Perishable Agricultural Commodities Act. The situation of the American poultry producer is no different from that of other producers protected under Federal law.

We urge this subcommittee to draft, adopt and work for Federal legislation which will provide poultry producers prompt payment for delivered poultry to wholesale purchasers or payors of poultry raising contracts, and will provide poultry producers secured priority creditor status for unpaid purchases of delivered poultry or unpaid deliveries pursuant to poultry raising contracts.

At this time I would like to thank Senator Specter for introducing Senate bill 2997, and if there are any questions, I would be happy to answer them.

Senator COCHRAN. Thank you, Mr. Weaver, for your statement. We appreciate your being here and contributing to the hearing in the way that you have.

There are two persons here who accompanied James Miller today, Richard Burchfield of Port Royal, PA and Earl Parsons.

I would like to give you both an opportunity to make whatever comments or statements you would care to at this time.

Mr. Burchfield.

STATEMENT OF RICHARD BURCHFIELD, PORT ROYAL, PA

Mr. BURCHFIELD. Thank you, Senator.

I would like to take this opportunity to share with this committee my personal experience as it relates to the subject that we are addressing today.

My name is Richard Burchfield, and I am from Port Royal, PA. I live on a 50-acre farm in Juniata County, just 48 miles west of Harrisburg, with my wife and two children, ages 4 and 2.

In 1968, I graduated from Shippensburg University with a degree in accounting and taught school for 9 years. My teaching career was interrupted temporarily in 1970 when I was drafted into the Army, and after returning home from Vietnam in 1972, I purchased a farm and continued to teach school.

I always had a strong desire to be involved in farming full time, but our 50-acre farm was not big enough to support our family in income generation. After reading in farm journals and university publications about the bright future of broiler production as a highly nutritious, low-fat meat of the future, we began talking to farmers who were involved in the broiler production business in our area.

The men I talked to were also encouraged by the bright future of the broiler industry. In fact, within a 20-mile radius of my farm, six of these same producers were involved in building new and larger broiler facilities.

The key to the business was the security of the growing contract, we were told. This also made lenders feel secure in lending money for new and expanding programs.

In 1979, after talking to three companies who offered broiler contracts, and after getting approval of a loan, we built our first building at a total cost of $95,000, and began operation of our broiler business. We signed a contract with Mandata Poultry Co. from Herdon, PA, on the basis of their strong expansion program and the fact that 21 other growers in our area were with them.

We did discover that contracts offered were about the same in price per pound and other pay benefits among the three companies we considered growing for. We did not think anything about this at the time.

Since our disastrous experience with Mandata Poultry and many phone calls and long trips to talk with other companies about growing contracts, we have found a severe problem within the poultry industry. The integrators, the feed companies, the grow-out operators, all call and communicate with each other as to the price per pound paid to growers. This locks us in from any lateral movement to better our financial position.

I have found it difficult to even move from one company to another because they seem to be fraternally and closely knit and frown on taking growers from each other. If they start offering more per pound than the next company, then we, the grower, will move toward them, and a price war for growers may result, which would only result in increased costs for the company.

Therefore, the companies stick together. This type of intercompany policy seems to be bordering on price fixing as far as the broiler growers are concerned.

In the case of the company that we were growing for, Mandata Poultry, the first year, 1979, was not too bad. It looked like the predictions for the bright broiler industry were correct. We worked hard and finished 33d out of 93 growers in grower performance for the year. We decided to build a second building with the encouragement of Mandata in 1980 so that we could stay at home and devote full time to our poultry business.

Our second building cost us $116,000 to build. Both buildings were set up on a 15-year payment schedule. We realized this was long, but we needed to squeeze out a living. Our first flock of chickens in the new building was a good one, but we had a problem with Mandata. Not one grow-out operation contract that I know of stipulates when the grower gets paid after raising a flock of chickens, Mandata, being no exception to this rule. Our serviceman informed us that our check which had been coming in 3 weeks would be delayed until 6 weeks. The company was having financial problems, we were told.

Our next two checks came 9 weeks after we sent the flock to Mandata. From 9 weeks, we were extended to 12 weeks, and our fixed expenses went on. Electricity costs are going up. Ours hap-

pened to rise 46 percent over that period of time. Our monthly payments at the bank went on, and we got behind in our payments.

I sold three rental trailers that we had on our farm just to keep up with my monthly payments, but the worst was yet to come as payments went from 12 weeks to 16 weeks by 1982. I made many phone calls, and even made a trip to Perdue, Inc. in Salisbury, MD, to talk with them about growing for them. Not one company was willing to take us on. We were locked into a situation that was draining us to a slow financial death.

By the end of 1982, I had to refinance our second building, which we had borrowed $116,000 on; made payments for 1 year on time, but due to the extended pay periods of Mandata, which we could do nothing about, I was being charged interest in arrears per day of $43. The note of $116,000 was refinanced for $140,000 by the end of 1984.

I had worked 2 years for nothing, and our entire financial situation has been devastated by Mandata Poultry, and now because of the bankruptcy laws, they want to collect the last check we had received from them for $9,060, making our total loss from this situation between $50,000 and $60,000, all of this from the security of a contract.

We, as broiler producers and growers, need protection as to when we get paid after sending birds, preferably 7 to 14 days, or we cannot survive as a family farm.

Senator COCHRAN. Thank you, Mr. Burchfield. Mr. Parsons.

STATEMENT OF EARL PARSONS, SHADE GAP, PA

Mr. PARSONS. I am Earl Parsons. I am a central Pennsylvania poultry and grain farmer. In the early 1970's, I built my first broiler building, 36,000 square feet in size, and became a contract grower. This is where the feed company or integrated processor furnishes the birds, feed, electricity, fuel, and heat. I, as a grower, furnish the labor, buildings and equipment for raising the birds. I am paid on pounds produced, plus a bonus for efficiency.

During the early years, things were going well in 1979. The grower business was in an upswing, and I expanded my business. I built and equipped another building of 48,000 square feet in size.

The business continued to flourish until 1980 or 1981. At that point prices began to decline. However, I was still being paid within 2 weeks after the flocks were marketed. At the time I was growing for Mandata Poultry Co. of Herndon, PA.

In about the latter part of 1981 or 1982, growers were told they would have to wait until 5 weeks after marketing to receive payment. The waiting period for payment was stretched to 7 weeks, then to 11 weeks, and finally 16 weeks. We were assured all the time that the conditions would improve.

I, along with other growers, informed Mandata that we would wait no longer than the 16 weeks' period for our money because they would have then been behind in payment for three flocks instead of two.

In the spring of 1983, Mandata filed chapter 11 bankruptcy, owing me over $26,000. I still had mortgage payments and high interest rates. Fortunately, I was able to meet the interest payments

only from grain and other commodities which I grow. I know other growers who were not so fortunate, and they owe more on their mortgages now than they did in 1982. Even though Mandata was responsible for electricity bills, the grower had to make the payment and then was reimbursed by the poultry company.

Many growers were forced with these electric bills, along with their mortgages and interest, plus their living expenses, they were faced with the hardship of trying to meet all of those expenses without any income, truly an impossibility.

In my opinion, Mandata Co. was able to execute a well-planned, convenient bankruptcy for the officers in their company with no regard to growers involved. Had the Packers and Stockyards Act included white meats, this would not have happened. It would not have been so profitable for Mandata officers to declare bankruptcy.

Poultry growers for their company would not have lost 5 months of hard work, wear and tear on their buildings, and payments for electricity and other expenses.

Senator COCHRAN. Thank you very much, Mr. Parsons.

Mr. PARSONS. Thank you.

Senator COCHRAN. I want to express appreciation to all of you for being here and contributing to the hearing. I think what we have learned from this panel's testimony is that there are several issue areas that are important to growers and others throughout the country that merit the attention of the committee.

The Specter bill, which has been referred to by some of you, was just recently introduced in the Senate, and I am sure it will be given a careful review.

The references to recent changes in behalf of vegetable and fruit producers merits the attention of the committee, as well.

In respect of the more narrow issue, that is, of the legislation introduced by Senator Heflin, there seems to be a pretty sharp difference of opinion between the processors and growers and other organizations. I think we do need to look carefully at the proposal to be sure we understand the consequences of any action by the Congress that would alter the authority of the Packers and Stockyards Administration.

Let me ask this. There seems to be some amount of confusion in my mind at least as a result of testimony from this panel. One witness at least points out that if the bill is approved, the Packers and Stockyards Administration will not have the authority to review records of processors to determine whether or not the weights or the payment had been fair to the growers.

That is not consistent with the understanding I got from the testimony from the first panel, which indicated that they understood they would continue to be regulated in their relationship with growers. Can anyone help clarify that for me?

Why is there concern that this bill would in any way affect the relationship between the growers and the processors of live poultry?

Mr. SHAFFER. Well, we feel the reason it would affect it is on a contract grower being paid on a yield grade basis, there is no way to determine that until the birds are slaughtered. Therefore, they would fall under process standards, and that is the reason we feel that that would be detrimental.

Senator COCHRAN. Well, it would be my opinion, and I am not prepared to discuss in too much detail that concern, but it would be my opinion that the law that gives the authority of the Administrator to look into the grower/processor relationship would have to provide the authority to obtain information, subpoena power of records and documents that would have a bearing on whether or not the agreements or contracts between the two were being carried out fairly and within the terms contemplated by the agreements.

My understanding of Senator Heflin's suggestion when he introduced the bill was that this legislation would be limited to the marketing, would prohibit the regulation of marketing by the processors of the slaughtered birds.

Mr. PROCTOR. Can I add a comment, Senator?

Senator COCHRAN. Yes, I would be very pleased.

Mr. PROCTOR. Mr. Jones, I think, adequately described this morning, in my view anyway, that this amendment would not affect the transactions that you referred to, the weighing, et cetera, and in that regard will not directly affect the relationship between processor and grower, but there is a very indirect relationship that will be affected.

As I pointed out in my statement, if there are bribes that are being made to wholesalers and others, those are payments that could be made to growers. You might view that as somewhat less tangible, but I think it is a very real concern that we have.

Senator COCHRAN. I understand that, and I agree that that is a possible result of this legislation.

Let me thank all of you for being here today and participating in the hearing. It has been very helpful to the subcommittee.

The subcommittee stands adjourned.

[Whereupon, at 11:45 a.m., the subcommittee was adjourned, subject to the call of the Chair.]

APPENDIX

STATEMENT OF HON. WALTER D. HUDDLESTON, A U.S. SENATOR FROM KENTUCKY

Mr. Chairman, S. 2781 is designed to clarify the scope of the Department of Agriculture's jurisdiction under the Packers and Stockyards Act.

As I understand it, the bill will amend the act to exclude processed poultry marketings from coverage under the act. The proponents of the legislation argue that the applicability of the act to the processed poultry industry has come about unintentionally as the result of previous amendments to the act for different purposes.

It is important that steps be taken to resolve the issue. So, I look forward to the testimony of today's witnesses.

STATEMENT OF B.H. (BILL) JONES, ADMINISTRATOR, PACKERS AND STOCKYARDS ADMINISTRATION, U.S. DEPARTMENT OF AGRICULTURE

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before the Subcommittee and comment on S. 2781, a bill to amend the Packers and Stockyards Act, 1921, to remove processed poultry marketing from coverage under the Act, and other issues involving the Packers and Stockyards Administration's (P&SA) role in poultry marketing.

The importance of the poultry industry to farmers, consumers and the American economy is well documented. The poultry industry is efficient in producing a high protein product at reasonable prices to the consuming public. The estimated annual wholesale value of poultry marketed is approximately $8 billion.

DEPARTMENTAL POSITION ON S. 2781

Although the Department is taking no position on the enactment of S. 2781, we do have some concerns with the legislation.

The bill seeks to remove the Department's jurisdiction over live poultry dealers or handlers with respect to transactions involving dressed poultry or poultry products. The Department's jurisdiction over packers with respect to transactions involving dressed poultry or poultry products would be continued, as would jurisdiction over live poultry dealers or handlers in connection with transactions involving live poultry.

The bill as presently drafted would not affect current regulation by the Department of transactions involving the marketing of dressed poultry by meat packers who also handle poultry products. This would result in jurisdiction over the marketing of dressed poultry and poultry products at the wholesale level being split between the Department and the Federal Trade Commission, with the Department exercising jurisdiction when such marketing was accomplished by a packer and the Commission exercising jurisdiction when the marketing was accomplished by a live poultry dealer or handler.

The proposed legislation would result in a minimal decrease in program costs.

HISTORY OF THE PACKERS AND STOCKYARDS ACT

The Packers and Stockyards Act was passed in 1921 and was the result of an extensive investigation by the Federal Trade Commission which was completed and reported to the President in July 1918. The FTC report specifically addressed the control the five largest meat packers exercised over the markets in which they procured livestock and other raw material food supplies and the marketing of meat, meat products and various other food products.

At that time, these same packers were the major marketers of dressed poultry which moved in interstate commerce. Thus, the marketing of dressed poultry was brought under the provisions of the P&S Act at the time of its passage in 1921.

During the 1930's, a large majority of poultry was marketed on a live basis at markets in major cities throughout the United States. As a result of the corrupt practices which developed in these live poultry markets, Title V was added to the Act in 1935 to bring the marketing of live poultry at these major markets under the Act. Currently, of course, there is very little poultry marketing on a live basis at the wholesale level.

Until the mid-1940's, growing poultry was largely a farmyard enterprise, with small flocks being raised on a seasonal basis. Since the late 1940's, the production of broilers, in particular, has moved to integrated firms which produce millions of broilers each year. Broilers and other poultry are marketed on a dressed basis to the major consumption areas throughout the country.

ENFORCEMENT PROBLEMS

To date, the Agency has yet to lose a case involving a poultry violation of the Act because of jurisdiction. In fact, there is a Court of Appeals decision upholding P&SA's jurisdiction over the modern, integrated firm with respect to its product marketing practices. However, the jurisdictional issue is not as clearly defined in the Act with respect to integrated poultry processors as it is with respect to livestock and red meats. As a result of this problem, it is much more difficult to investigate and prosecute cases involving poultry and poultry products, both with respect to product marketing and the handling of live birds under growout contracts or marketing agreements.

It is common for the firms in the industry to force the Agency to go through subpoena enforcement actions in the civil courts. Also, the courts have held that the Agency cannot utilize the administrative procedure in connection with poultry violations, but rather, must pursue such violations of the Act in a U.S. District Court. This, of course, entails referring such cases to the Attorney General for prosecution. In contrast, the Agency handles most of its work involving livestock and red meats through the administrative procedure as outlined in the Act.

As a result of these problems, the expenditure of resources required in terms of both money and manpower is substantially greater than in the case of investigating similar complaints involving livestock and red meats.

As Administrator of the Agency, I would much prefer to see the Congress either: (1) Relieve the Agency of any responsibility with respect to firms which handle poultry only; or (2) clearly give the Agency authority comparable to that applicable to livestock and red meat.

The industry is inclined to talk about poultry operations and firms as if they existed as "pure entities." In the real world, however, this is definitely not the case. The trend is—and is likely to continue to be—toward combination operations; i.e., poultry and red meat being handled by the same firm, particularly in processing and product marketing or distribution. A review of the 50 largest poultry firms shows that 23 of them also handle red meats. Also, of the 50 largest red meat slaughterer/processors 41 have been granted poultry inspection.

There is a similar "mixed-bag" situation and trend in the products themselves, with more and more processed and sausage-type products containing both poultry meat and red meat. For example, beef franks may contain up to 15 percent poultry under USDA's Food Safety and Inspection Service regulations (section 319.180(b)). We are told that virtually all red meat processors use poultry meat in their "sausage-type" products and that the request for grants of poultry inspection by red meat processors increases each week.

Again, this trend will continue as the industry moves more and more to further processing, refined fabrication, and the marketing of ready-to-eat products.

Any attempt to apply different enforcement standards to poultry transactions as contrasted to livestock and red meat transactions of the same firm will create serious problems for the industry and the Agency.

This concludes my formal statement. I shall be glad to answer any questions which the Subcommittee members may wish to raise.

STATEMENT OF JAMES C. MILLER, ASSISTANT LEGISLATIVE DIRECTOR, THE NATIONAL GRANGE

Mr. Chairman and Members of the Committee; I am Jim Miller, Assistant Legislative Director of the National Grange. Our offices are located at 1616 H St. N.W. Washington, D.C. 20006.

The National Grange is a general farm and rural organization of 400,000 members in 41 states. Many of our members are engaged in the raising of poultry for poultry processors or business firms that contract with farmers for the production of broilers and other types of live poultry under a grow-out contract or marketing agreement.

The Grange appreciates this opportunity to comment on S. 2781, introduced by Senators Heflin, Nunn, Stennis and Zorinsky. The bill would remove processed poultry marketings from coverage of the Packers and Stockyards Act of 1921, as amended. This would be accomplished by amending Section 202 of the Act (7 U.S.C. 192) by striking out "It shall be unlawful with respect to livestock, meats, meat food products, livestock products in unmanufactured form poultry, or poultry products for any packer or any live poultry dealer or handler to:" and inserting in lieu thereof "It shall be unlawful for any packer, with respect to livestock, meats, meat food products, livestock products in unmanufactured form, poultry or poultry products, or for any live poultry dealer or handler with respect to live poultry, to:" The Act then lists business practices that would be prohibited by such individuals or firms.

The authors of the amendment in a Dear Colleague letter stated that Congress never intended to cover transactions by poultry processors in slaughtered poultry. The 1958 amendment was ruled by the Second Circuit U.S. Court of Appeals in a 2 to 1 majority that the Act covered alleged exclusive dealing agreements in processed broilers. The Court concluded that they were bound by the literal language of the statute even though all members agreed that Congress had never expressed any concern with the practices or competitive activities of the processed broiler industry. The Grange contends that even if Congress did not express that concern in 1958, at the time the amendment in question was considered, that times have changed and the make-up and practices of the processed poultry industry is entirely different than that found at that time. We also are not convinced that Congress did not express some concern at that time and earlier in the history of the Act.

Today the processed poultry industry is not confined just to the marketing of dressed poultry carcasses or poultry parts. There are hundreds of processed meat, meat products and canned and frozen foods that contain poultry meat. The meat and poultry processing industry is intertwined with poultry processors mixing red meat with poultry meat and meat product processors mixing red meat with poultry meats. Which of the above does S. 2781 address, the poultry processor that mixes red meat with his poultry or the red meat processor who mixes poultry with his red meat—or both? A simple amendment to remove the preceived ambiguity in the Act could result in having part of a product under the jurisdiction of P&S and part not covered. The result would be more ambiguity, confusion, inequities and discrimination.

If the intention is just to remove the jurisdiction of the Act from coverage of processed poultry the amendment is discriminatory in that the Act still would contain jurisdiction over red meat processors. Both are in competition with each other and it is unfair to regulate one and not the other. Because of the commingling of meats in food products the processed poultry industry is more akin to the red meat industry and is not like the baking or canned and frozen food processing industry.

At the present time the Packers and Stockyards Administration has certain responsibilities that deal with the purchase of poultry for slaughter. If the P&S is to carry out their responsibility under the marketing of live poultry they need access to records of the processing firms. S. 2781 would deny P&S this needed access.

As we have noted the poultry industry as it applies to broilers, turkeys and other fowl is far different than it was in 1935 or 1958. It is a highly competitive industry not only as it pertains to poultry products but also in relationship to the red meat industry. The red meat industry is regulated under provisions of the Packers and Stockyards Act of 1921 as amended and we believe the poultry industry should also come under the jurisdiction of the Act.

A free market does not exist for broilers and turkeys. Most all are grown under a contract with a poultry processing firm or another integrator such as a feed manufacturer who in turn has a supply contract with a poultry processor. The producer is paid on the gain in weight of the birds under his contract. The terms of the contract or marketing agreement vary from integrator to integrator but in all cases the grower does not own the birds. He is paid for his labor, electricity, housing and other production costs, except feed, which is supplied by the integrator.

We find no fault with this type of grow-out arrangements, they can and are beneficial to family farmers. But the grower has little to no protection if the firm he is growing for goes bankrupt owing him for his services. In many cases the firm may owe the grower for several flocks not just the flock under the current grow-out agreement.

Since 1982 four broiler and turkey firms have declared bankruptcy, affecting 1718 growers who are still owed $13,750,000 dollars. The growers had contracts which stipulated the terms of payments. The terms were not met and growers, because of the lack of a market for birds and to continue to utilize their facilities and production skills, continued to grow birds for the firm in hopes they would become solvent. The contract grower has little recourse because he can not find another market for the birds.

I have with me today a representative of the Pennsylvania State Grange and two growers that have just experienced what I have outlined above. They have an interesting story to tell.

The Grange believes that enactment of S. 2781 would be a move away from providing poultry growers the protection they need and deserve. We fully realize that many firms do not have financial problems and pay their growers in a timely manner. Unfortunately, that is not always the case.

The red industry had many of the same problems which led to the 1976 amendments to the Packers and Stockyards Act of 1921, which provided for prompt payment, packer trust, administrative procedures, bonding, temporary restraining orders and civil penalties. These provisions in the Act pertaining to the red meat industry have worked well. Both the producers and the industry have found them acceptable and workable as they have not resulted in any over or unnecessary regulations.

At the last Annual meeting of the National Grange the delegate body adopted the following policy: "The National Grange, in cooperation with State Granges, have legislation introduced in the United States Congress to amend the Packers and Stockyards Act so as to provide the live poultry grower, who raises birds for a live poultry processor, the same financial protection provisions regarding prompt payment as provided the livestock industry."

The Grange believes that it is a matter of industry equity, fairness and good government to provide the same financial protection provided the livestock industry under the Packers and Stockyards Act. We also would like to point out that the producers of fresh fruit and vegetables now have some of the same financial protection through recent amendments to the Perishable Agriculture Commodities Act (PACA). There is also a bill pending before the House that would provide the dairy farmer some financial protection through prompt payment provisions that would be applicable to handlers. If that bill becomes law the poultry grower would stand alone among specialty producers as being without the financial protection that amendments to the P&S Act could provide.

A bill introduced earlier in the week by Senator Specter of PA. has the Grange's support. S-2997 would amend the P&S Act of 1921, to require the prompt payment of live poultry growers by live poultry processors. The bill may not solve all the problems of prompt payment by live poultry processors but it is a start in the direction we must move if poultry producers are to receive fair treatment under law. We believe and recommend that the Packers and Stockyards Act of 1912, as amended be further amended to provide the poultry producer the same financial protection provided the livestock producer, including bonding, administrative procedures, packer trust, prompt pay, temporary restraining orders and civil penalties. We further believe this can be done by fine tuning these provisions as they apply to the red meat industry to the growing of live poultry, thus providing the poultry grower equity, fairness and the benefits of good government.

Mr. Chairman we commend you for calling hearings on S. 2781 and for permitting the Grange to present its views and recommendations on amendments to the Packers and Stockyards Act of 1921. I'll be glad to respond to any questions you or the Committee members may have. Thank you.

STATEMENT OF STUART E. PROCTOR, JR., ASSISTANT DIRECTOR, NATIONAL AFFAIRS DIVISION, AMERICAN FARM BUREAU FEDERATION

The American Farm Bureau Federation appreciates the opportunity to appear before this Subcommittee on the Packers and Stockyards Administration's regulation of the poultry industry. Farm Bureau has been actively involved in the Packers and Stockyards Administration's programs since the agency was created in 1921.

We agree that the Packers and Stockyards Administration's jurisdiction over the marketing of processed poultry products is unclear. Little enforcement and regulation of poultry marketing has occurred partially because of unclear jurisdiction but more importantly because of insufficient resources to conduct proper investigations.

The purpose of S. 2781 is to clarify the jurisdictional question by removing any Packers and Stockyards Administration's authority over poultry markets. Proponents of this bill favor passage for two reasons: jurisdiction over poultry marketing was unintentionally written into law and current conditions do not warrant continued surveillance.

Farm Bureau disagrees with this position and feels that passage of S. 2781 is premature without a more thorough assessment of the legislative impact on the industry. Even if coverage of poultry marketing was unintentionally written into the law, a current assessment of the effect of its removal should be conducted. This assessment may indicate that current conditions warrant retention or strengthening of the provision in view of recent Packers and Stockyards Administration's allegations of bribery.

The Packers and Stockyards Administration is conducting two major investigations of commercial bribery involving meat wholesalers and brokers and supermarket purchasing executives. Poultry producers are keenly interested in these cases because bribes, if they exist, give certain processors unfair marketing advantages and may be taken from profits which should be returned to growers.

Before S. 2781 is passed by this Subcommittee, we encourage the Packers and Stockyards Administration to study and determine the following:

(1) Do bribes exist in the poultry processing industry? Are there other unfair competitive practices which warrant further investigation? The recent Four-S Corporation lawsuit is a unique action because it charges seven poultry processors with a conspiracy to fix minimum prices for boneless, skinless breasts.

(2) If regulation of poultry marketing is transferred to the Federal Trade Commission, will it be adequately enforced? Does the Federal Trade Commission have the resources and capability to deal with this?

(3) Will this regulatory change for poultry affect enforcement of red meat regulations? How will auditors handle apparent poultry improprieties? Will access to records or efficiency of case review be jeopardized?

(4) Why are their differences in the Packers and Stockyards Administration's regulation of poultry and red meat products?

This latter point is of particular interest to Farm Bureau. A comparison pointing out the inconsistency is provided in Table 1.

For a number of years, Farm Bureau has advocated a prompt pay provision for live poultry to protect growers against unreasonable delays in payment. Red meat producers have had this protection since the mid 1970s. Also, this Congress has passed two bills to provide protection for grain producers and fresh fruit and vegetable producers. The Bankruptcy Reform Act of 1984 provided protection for producers who have sold but not received payment for their grain.

In May 1984, Congress amended the Perishable Agricultural Commodities Act by requiring the establishment of a trust for commodities and proceeds from their sale. The trust is available as a source of payment to any unpaid producer, seller or agent until payment has been made.

Farm Bureau will support legislation which will give poultry producers the same payment assurance protection now accorded red meat and fruit and vegetable producers. Recent business failures and bankruptcy losses have shown an increase. Only two poultry firms went bankrupt during Fiscal Years 1978–1982. However, in Fiscal year 1983, bankruptcies of five poultry processors affected about 1,900 poultry growers who are owed $14 million. Processor bankruptcies present an abnormal marketing risk against which producers are unable to protect themselves.

Since the end of World War II, the broiler industry has changed from an industry of small independent producers into a highly integrated agricultural industry where many producers grow broilers under contracts with processors. In Fiscal Years 1983–1984, there were 8 orderly closings and 18 sales. From 1973–1984 the number of processors was reduced by 71 firms as a result of mergers and acquisitions. The smaller number of processors is another reason for prompt pay legislation to protect poultry growers who do not have the flexibility to choose between competing processors.

On October 27, 1983, the Senate amended the 1984 supplemental appropriation bill, H.R. 3959, to require the government to pay promptly within seven days processors of fresh or frozen poultry or eggs and egg products. This requirement was passed at the request of poultry processors. Poultry growers are now asking for this same prompt pay protection.

Prompt pay legislation is a self-help tool that will enable producers to protect themselves against the unreasonable risk of losses resulting from bankruptcies, slow-pay and no-pay practices by buyers of live poultry.

TABLE 1

DIFFERENCES IN APPLICATION OF PACKERS AND STOCKYARDS ACT OVER LIVESTOCK INDUSTRY AND POULTRY INDUSTRY

	Livestock and Packers	Poultry Growers/Sellers	Reference
PAYMENT PROTECTION			
Trusts (Packer):	Yes	No	Act Sec. 206
Bonds:	Yes	No	Act, Page 26
Solvency Test:	Yes	No	Act, Page 26
Private Actions:	Yes	No	Act Sec. 308
Reparations:	Yes	No	Act Sec. 309
Temporary Restraining Orders:	Yes	No	Act Sec. 408
Custodial Account:	Yes	No	Reg 201.42
Prompt Payment for Purchases:	Yes	Reg. 201.111 only purchases for slaughter	Act Sec. 409

FORMAL PROCEEDINGS	Livestock and Packer Industry	Poultry Industry
Administrative Procedures	Yes	No
U.S. District Court	Yes	ONLY

98TH CONGRESS
2D SESSION

S. 2781

To amend the Packers and Stockyards Act, 1921 to remove processed poultry marketings from the coverage of such Act.

IN THE SENATE OF THE UNITED STATES

JUNE 20 (legislative day, JUNE 11), 1984

Mr. HEFLIN (for himself, Mr. NUNN, Mr. STENNIS, and Mr. ZORINSKY) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

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A BILL

To amend the Packers and Stockyards Act, 1921 to remove processed poultry marketings from the coverage of such Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 202 of the Packers and Stockyards Act, 1921 (7 U.S.C. 192) is amended by striking out "It shall be unlawful with respect to livestock, meats, meat food products, livestock products in unmanufactured form, poultry, or poultry products for any packer or any live poultry dealer or handler to:" and inserting in lieu thereof "It shall be unlawful for any packer, with respect to livestock, meats, meat food products,

livestock products in unmanufactured form, poultry, or poultry products, or for any live poultry dealer or handler, with respect to live poultry, to:".

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, DC, September 24, 1984.

Hon. JESSE HELMS,
Chairman, Committee on Agriculture, Nutrition, and Forestry,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request for a report by the Department on S. 2781, a bill "To amend the Packers and Stockyards Act, 1921, to remove processed poultry marketings from the coverage of such Act."

This Department has no position on the enactment of this bill, but we have certain concerns as described below.

The bill seeks to remove the Department's jurisdiction over live poultry dealers or handlers with respect to transactions involving dressed poultry or poultry products. The Department's jurisdiction over packers with respect to transactions involving dressed poultry or poultry products would be continued, as would jurisdiction over live poultry dealers or handlers in connection with transactions involving live poultry.

The bill as presently drafted would not affect current regulation by the Department of transactions involving the marketing of dressed poultry by meat packers who also handle poultry products. This would result in jurisdiction over the marketing of dressed poultry and poultry products at the wholesale level being split between the Department and the Federal Trade Commission, with the Department exercising jurisdiction when such marketing was accomplished by a packer and the Commission exercising jurisdiction when the marketing was accomplished by a live poultry dealer or handler.

The proposed legislation would result in a minimal decrease in program costs.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD E. LYNG,
Acting Secretary.

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